

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF REVISING THE)
BOUNDARIES OF WATER DISTRICT)
NO. 130, THOUSAND SPRINGS AREA,)
IN ADMINISTRATIVE BASIN 37)

**PRELIMINARY ORDER
REVISING THE BOUNDARIES
OF WATER DISTRICT NO. 130**

The Director of the Idaho Department of Water Resources ("Director" or "IDWR") is authorized by statute to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. The authority to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. The Director is also authorized by statute to revise the boundaries of any water district in order to properly distribute water. During the pendency of a water rights adjudication, the district court having jurisdiction is authorized by statute to approve interim administration of the water rights by the Director, if reasonably necessary to protect senior water rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report with or without modification by the court's order.

FINDINGS OF FACT

1. On February 19, 2002, the Director issued an order creating Water District No. 130, pursuant to the provisions of Idaho Code § 42-604. The boundaries of Water District No. 130 were originally limited to ground water rights in Administrative Basins 36 and 43 overlying the Eastern Snake Plain Aquifer ("ESPA") in the Thousand Springs area. The boundaries of Water District No. 130 were limited to Basins 36 and 43 within the ESPA because water rights in those basins had either been included in a Director's Report or partially decreed by the Snake River Basin Adjudication ("SRBA") District Court. In addition, holders of junior priority ground water rights in Basins 36 and 43, as well as some users in Basins 37 and 45 overlying the ESPA entered into written stipulated agreements with holders of senior priority surface water rights from the Thousand Springs area. The signatories to those Agreements agreed to work with the Director to expeditiously create or revise the boundaries of water districts to implement the terms of the Agreements.

2. On January 8, 2003, the Director issued an order revising the boundaries of Water District No. 130, pursuant to the provisions of Idaho Code § 42-604, to include ground water rights in that portion of Administrative Basin 37 overlying the ESPA.

3. On November 4, 2005, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of surface water rights by the Director in Administrative Basin 37, Part 1 Surface Water (surface water rights within that portion of Administrative Basin 37 overlying the ESPA). Copies of this motion were mailed to

affected water right holders of record on November 4, 2005.

4. On December 13, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 37, Part 1 Surface Water, pursuant to chapter 6, title 42, Idaho Code.

5. On January 13, 2006, the Director mailed notice, by regular mail pursuant to the provisions of Idaho Code § 42-604, of the proposed action revising the boundaries of Water District No. 130 to include surface water rights within Basin 37 overlying the ESPA. The proposed action sought to include primarily those water rights diverted from spring and surface water sources in Basin 37 located north of Hagerman, Idaho near the Malad River and Bliss, Idaho. The proposed action would also include other surface water rights in Basin 37 overlying the ESPA that are not already included in an existing water district. Notice was mailed to each water right holder of record in that area of Basin 37 within the ESPA and affected by the proposed revision of the water district, as well as all water right holders of record in Water District No. 130. The notice described the proposed action to be taken, the reasons therefor, the time and place of a hearing to be held on January 26, 2006, concerning the proposed action, and provided a time period within which written comment on the action would be accepted.

6. Allen Merritt, IDWR Southern Regional Manager conducted a hearing on the proposed revision of the Water District No. 130 boundaries at the American Legion Hall Post 31, 281 North State St., in Hagerman, Idaho, at 8:20 pm on January 26, 2006. Approximately 21 people attended the hearing.

7. Prior to commencing the hearing, Mr. Merritt (hearing officer) spent approximately 80 minutes describing the background and purpose of the proposed action and addressing questions. The hearing officer and staff from IDWR also presented information concerning current and future operations of the district.

8. Persons attending the hearing were provided an opportunity to make an oral statement for the record. In addition, the hearing officer held the record open through February 6, 2006, for the submission of written comments.

9. Four individuals presented oral statements for the record at the hearing:

- a. Verl Bell of Hagerman, Idaho presented a statement on his own behalf. Mr. Bell stated that he owns two water rights in Basin 37 and that he would like the Director to consider his rights and those of his neighbors in Water District 36-A where there are other water right holders of similar interest. Mr. Bell further stated he and neighboring water users do not have much in common with other users in Water District No. 130 and that they would not have adequate representation if included in this larger district.
- b. Stan Standal of Bliss, Idaho, presented a statement on his own behalf. Mr. Standal stated that he holds water rights in Basin 37 along River Road near Bliss. Mr. Standal asked that the Director reconsider the proposed inclusion of this area in Water District No. 130 and instead include the area in Water District No. 36-A

because his and his neighbor's water rights are closer to Water District 36-A and that they would be better represented in Water District 36-A.

- c. Jeanette Brizendine of Bliss, Idaho, made a statement on behalf of Wood Farms Partnership, which owns several spring or surface water diversions along River Road near Bliss. Ms. Brizendine also recommended that the Director consider placing the water rights in this area in Water District 36-A because they are in closer proximity to Water District 36-A, the users in this area and Water District 36-A share common interests, and the watermaster of Water District 36-A is knowledgeable of the Bliss area. Ms. Brizendine also commented that the current watermaster of Water District No. 130, Cindy Yenter, has worked well with the users of the Bliss area.
- d. Kim Wood of Bliss, Idaho, made a statement on his own behalf. Mr. Wood said that he agreed with the comments of the other water users that testified before him and that he feels they would be better off in Water District No. 36-A.

10. The Director did not receive any written comments from affected water right holders or other interested parties prior to the close of the comment period on February 6, 2006.

11. The United States Geological Survey ("USGS") defined the boundaries of the Eastern Snake Plain based on the 1980 Regional Aquifer System Analysis Study. For administrative purposes, IDWR considers the boundaries of the ESPA to closely approximate the boundaries of the Eastern Snake Plain as determined by the USGS.

12. The water supply from the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA and surface water sources tributary to the Snake River is in the Thousand Springs area located near the western edge of the ESPA near Hagerman and Bliss, Idaho.

13. The available water supply in portions of Basin 37 overlying the ESPA, including surface water sources in the Thousand Springs area near Bliss and Hagerman, is currently not adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA, and is projected in the future to be insufficient, at times, to satisfy these water rights.

14. Surface water rights in those portions of Basin 37 overlying the ESPA that are not included within Water District No. 130, Water District No. 36-A (Billingsley and Riley Creeks and tributaries), Water District No. 37-W (Clover Creek and tributaries), Water District 37-N, (Upper Little Wood River), Water District No. 37-U (Fish Creek) or Water Districts 37 and 37-M (Big and Little Wood Rivers and tributaries) are currently not subject to administration by water districts.

15. The administration of surface water rights within those portions of Administrative Basin 37 overlying the ESPA is necessary for the protection of prior surface water rights.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all surface and ground waters in the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director has the responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, as provided in chapter 6, title 42, Idaho Code.

3. The Director is authorized to establish water districts or revise the boundaries of water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer uses of the water resource. *See* Idaho Code § 42-604.

4. In addition, the district court having jurisdiction over a general water rights adjudication may permit the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, prior to the entry of a final decree, in accordance with director's reports filed with the court or in accordance with partial decrees that have superseded the director's reports. *See* Idaho Code § 42-1417.

Response to Testimony and Written Comments

5. Holders of spring or surface water rights in Basin 37 located in the Thousand Springs area between Hagerman and Bliss testified that the Director should include their rights in Water District No. 36-A instead of Water District No. 130. The users stated that the proximity and smaller size of Water District 36-A would provide them better water district representation. Shared common interests and similarities between Water District No. 36-A and the Basin 37 Hagerman-Bliss area, and the fact that the Water District 36-A watermaster is familiar with the springs in the Basin 37 Hagerman-Bliss area were cited as additional reasons for inclusion in Water District No. 36-A.

6. In response to the hearing testimony, the hearing officer has examined the records of both Water District No. 130 and Water District No. 36-A, and makes the following conclusions:

- a. Water District No. 130 has maintained sufficient annual budgets and adequate resources in which to complete the watermaster duties required by chapter 6, title 42, Idaho Code. Specifically, Water District No. 130 has an annual budget of over \$75,000 to compensate a full-time watermaster, part-time deputy watermaster, and part-time clerical assistant that have adequate field, office and transportation equipment to accomplish the watermaster duties.

- b. Water District No. 36-A has not maintained adequate annual budgets to fulfill the watermaster duties required by chapter 6, title 42, Idaho Code. Annual water district budgets over the past several years have only been about \$3,000 to \$7,500. Water District 36-A lacks adequate field measurement equipment, computers and other office or communication equipment that is compatible with IDWR.
- c. Water District No. 36-A has little or no direct involvement with annual water measurement and reporting of diversions within the district. IDWR sends and receives annual reports to and from users within the district, does data entry of the annual reports, maintains computer records of diversions and water use, provides quality control of diversion data, and provides some field calibration of measuring devices. IDWR has also directly enforced measuring device and head gate requirements, as well as the measurement reporting requirements in Water District 36-A. In contrast, Water District No. 130 completes all of these measurement and reporting tasks on its own with little or no assistance from IDWR.
- d. The records of Water District No. 130 show that the holders of surface water rights have equal representation with ground water users in the water district in terms of voting and representation on the advisory committee. The surface water users are also assessed equally, or pay for about half of the total water district budget.
- e. The current watermaster of Water District No. 130 is at least equally familiar with the spring and surface water diversions in the Basin 37 Hagerman-Bliss area as the Water District No. 36-A watermaster. The current Water District 130 watermaster, Cindy Yenter, assisted the West ESPA Water Measurement District for several years with measuring and reporting of diversions in that area and still provides some occasional assistance to users in the area as an employee of IDWR. She has made direct measurements of diversions and/or calibrated measuring devices in the area. She has met or worked with most of the water users in the area and has personally visited every diversion at least once. Testimony provided at the hearing confirmed that Ms. Yenter is familiar with the area and has worked well with the local water users.
- f. Water District No. 130 has demonstrated an ability to regulate water rights and diversions in the district under the supervision of the Director of IDWR, enforce water measurement and reporting, monitor water use and curtail unauthorized uses, and monitor and enforce mitigation plans or stipulated agreements. Water District 36-A has demonstrated some ability to regulate and deliver water in the district but appears to lack adequate funding and resources to assure that diversions are properly measured and reported. It is difficult to justify adding more diversions to Water District No. 36-A given the current level of funding and resources in the district.

- g. Water District No. 130 already includes many spring and surface water sources that are tributary to the Snake River in the Thousand Springs area including all other spring and surface water sources in Basin 36 except those in Water District 36-A. Many of the diversions are for fish propagation, irrigation, and hydropower uses, and therefore similar to the rights and uses in both the Basin 37 Hagerman-Bliss area and Water District 36-A.
- h. There are some additional surface water rights in Basin 37 overlying the ESPA that are not located in the Hagerman-Bliss area that are not currently in a water district but need to be administered by a water district. Some of these rights are located a distance of more than 60 miles from Bliss and Hagerman. It would not be practical to include these other surface water rights within Water District No. 36-A.

7. Prior to the taking of testimony at the hearing, the hearing officer described those areas within the ESPA that are already in water districts and outlined the Director's plans to include the remaining areas of the ESPA in water districts. The spring sources in the Basin 37 Hagerman-Bliss area are one of the few remaining water sources in the ESPA to be included in a water district. The hearing officer explained the reasons for creating water districts in the ESPA. The hearing officer also explained that the Director might revise Water District No. 130 again so that all the springs in the Thousand Springs area along the Snake River, including those springs and surface water sources in Water District 36-A and the Basin 37 Hagerman-Bliss area, be included in one water district separate from ground water rights in Water District No. 130. The Director is required to send notice and schedule a hearing regarding any additional proposed revisions of Water District No. 130.

8. Although separating the spring and surface water sources from ground water sources in Water District No. 130 and placing them in a separate water district may address some of the concerns raised by those water users who testified at the hearing, or provide other benefits to spring users, the hearing officer concludes that it is more expedient to include the Basin 37 Hagerman-Bliss area surface water rights in Water District No. 130 at this time in order to provide immediate administration of those water rights and to deliver senior priority rights.

Revision of District Boundaries

9. Based on the above statutory authorities, the order of the SRBA District Court authorizing interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should revise the boundaries of Water District No. 130 to include administration of surface water rights, excluding those rights whose use is solely for domestic and/or stockwater purposes for which interim administration was not obtained, and excluding those rights diverted from or tributary to the Big Wood River, Little Wood River, Fish Creek and Clover Creek in that portion of Administrative Basin 37 overlying the ESPA as shown on the map appended hereto as Attachment A to protect senior priority water rights.

10. The revised boundaries of the water district should be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

11. Immediate administration of water rights pursuant to chapter 6, title 42, Idaho Code, is necessary, other than domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided. Administration of domestic and stockwater rights as required by Idaho law will need to be addressed separately from this order.

12. The watermaster for Water District No. 130, with the boundaries as revised pursuant to this order, shall perform the following duties in accordance with the direction and supervision of the Director:

- a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- b. Measure and report the diversions under water rights;
- c. Enforce the provisions of any mitigation plans or stipulated agreements approved by the Director; and
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights that are not covered by a stipulated agreement or a mitigation plan approved by the Director.

13. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, analytic or model studies, and the Director's best professional judgment.

14. Water District No. 130, with the boundaries as revised by this order, should include the following organizational features:

- a. Election and appointment of a watermaster for the water district. The water users may elect to have the district contract with IDWR to provide watermaster services. Under a contract with IDWR, the watermaster will be a direct employee of IDWR.
- b. Creation of sub-districts whose boundaries match the boundaries of existing ground water districts, irrigation districts, or measurement districts, or other areas as may be proposed by the Director or right holders within the water district and deemed appropriate by the Director.
- c. Selection of a Water District Advisory Committee that includes representation from boards of directors of ground water districts, irrigation districts, or from other groups of right holders within the water district as may be appropriate.
- d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall perform work pursuant to instructions of the

watermaster. Deputy watermasters may be employees of existing ground water districts or irrigation districts that are located within the water district. Duties of appointed deputy watermasters that are also employees of an existing ground water district or irrigation district shall be limited primarily to measuring and reporting of diversions.

- e. Diversions not included in an existing ground water district or irrigation district shall be assessed costs directly by the watermaster.
- f. Ground water districts and irrigation districts that are organized as sub-districts may collect and pay the pro-rata expenses on behalf of the water right holders within the respective district to avoid assessing holders of water rights by both the sub-district and the water district.

ORDER







IT IS ORDERED that:

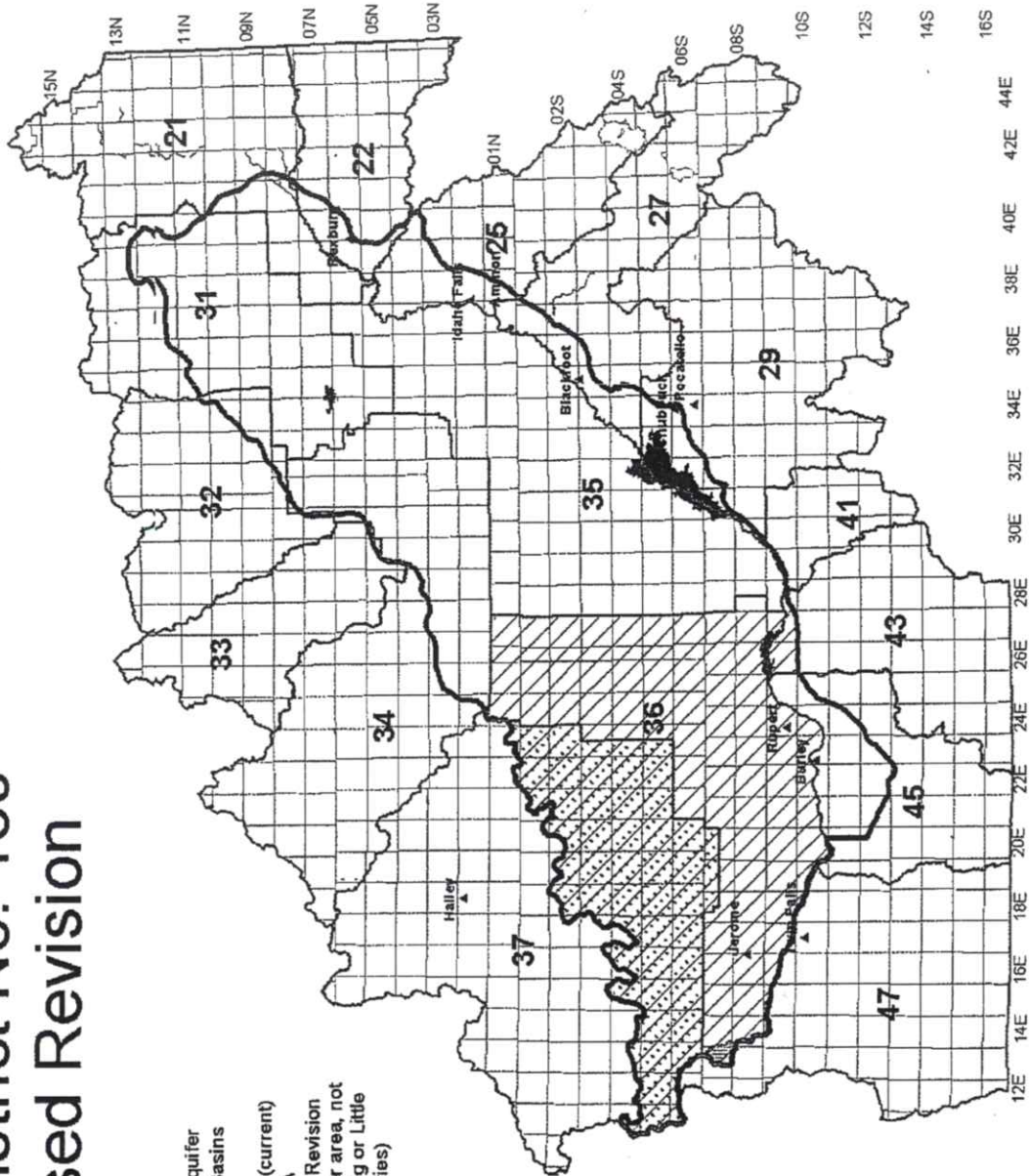
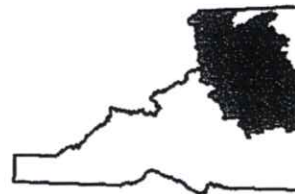
1. The boundaries of Water District No. 130 in the Thousand Springs area are hereby revised to include all surface water rights within those portions of Administrative Basins 37 overlying the ESPA as depicted on the map appended hereto as Attachment A and incorporated herein by reference, excluding small domestic and stockwater as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided and excluding surface water rights diverted from or tributary to the Big Wood River, Little Wood River, Fish Creek and Clover Creek.
2. The watermaster for Water District No. 130 shall perform watermaster duties in accordance with the provisions of Conclusions of Law 12 through 14 of this order.
3. For 2007, the water right holders included within the revised boundaries of Water District No. 130 shall meet at a time and place to be announced by the Director to elect a watermaster, select an advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

DATED this 14th day of November 2006.


Allen Merritt
IDWR Hearing Officer

Water District No. 130 Proposed Revision

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 130 (current)
-  Water District No. 36-A
-  Water District No. 130 Revision
(Basin 37 surface water area, not including rights from Big or Little Wood Rivers & tributaries)



RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

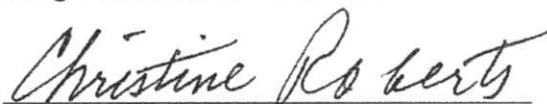
- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2006, a true and correct copy of the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the in the United States mail, postage prepaid and properly addressed.

Document(s) Served: Preliminary Order Revising Boundaries of Water District 130.
Information Sheet

A handwritten signature in cursive script that reads "Christine Roberts". The signature is written in dark ink and is positioned above the printed name and title.

Christine Roberts
Technical Records Specialist
Idaho Department of Water Resources